

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #10	CCRB Case #: 201708505	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/15/2017 2:16 AM	Location of Incident: In front § 87(2)(b)	Precinct: 46	18 Mo. SOL 4/15/2019	EO SOL 4/15/2019	
Date/Time CV Reported Mon, 10/16/2017 2:42 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/16/2017 2:42 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Rafael Lara	937	956825	046 PCT
2. POM Fausto Ramirez	10218	956787	046 PCT
3. SGT Michael Whelan	02829	948440	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kristi Skehill	12014	953413	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Rafael Lara	Abuse: Police Officer Rafael Lara stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
B.POM Fausto Ramirez	Abuse: Police Officer Fausto Ramirez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
C.POM Rafael Lara	Abuse: Police Officer Rafael Lara frisked § 87(2)(b)	§ 87(2)(b)
D.POM Rafael Lara	Abuse: Police Officer Rafael Lara searched § 87(2)(b)	§ 87(2)(b)
E.POM Fausto Ramirez	Abuse: Police Officer Fausto Ramirez searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
F.SGT Michael Whelan	Abuse: Sergeant Michael Whelan searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
G.SGT Michael Whelan	Abuse: Sergeant Michael Whelan damaged § 87(2)(b)'s property.	§ 87(2)(b)

Case Summary

§ 87(2)(b) called the CCRB on October 16, 2017 and filed the following complaint.

On October 15, 2017, at approximately 2:16 a.m., § 87(2)(b) stopped her rental vehicle in front of § 87(2)(b) in the Bronx to drop off her girlfriend, § 87(2)(b) before going to look for parking. § 87(2)(b) vehicle was approached by an unmarked vehicle containing PO Rafael Lara and PO Fausto Ramirez from the 46th Precinct (**Allegation A and B – Abuse of Authority:** § 87(2)(g) PO Lara told § 87(2)(b) and § 87(2)(b) to exit the vehicle. PO Lara frisked (**Allegation C – Abuse of Authority:** § 87(2)(g) and searched (**Allegation D – Abuse of Authority:** § 87(2)(g) § 87(2)(b) § 87(2)(b) was not frisked.. PO Ramirez stated he smelled marijuana and searched the vehicle (**Allegation E – Abuse of Authority:** § 87(2)(g) Sgt. Michael Whelan and his operator, PO Kristi Skehill from the 46th Precinct arrived at the location and Sgt. Whelan searched the vehicle again (**Allegation F – Abuse of Authority:** § 87(2)(g) While he was in the vehicle, Sgt. Whelan grabbed § 87(2)(b) pack of cigarettes and allegedly crushed it (**Allegation G – Abuse of Authority:** § 87(2)(g) § 87(2)(b) was issued a summons for double-parking and no arrests were made.

There are two videos associated with this case (BR 01, 02).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Rafael Lara stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B – Abuse of Authority: Police Officer Fausto Ramirez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation C – Abuse of Authority: Police Officer Rafael Lara frisked § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Rafael Lara searched § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer Fausto Ramirez searched the vehicle in which § 87(2)(b) was an occupant.

Allegation F – Abuse of Authority: Sergeant Michael Whelan searched the vehicle in which § 87(2)(b) was an occupant.



201708505_20171115_1157_DM.MOV



201708505_20171115_1156_DM.MOV

§ 87(2)(g)

§ 87(2)(b) was interviewed at the CCRB on November 14, 2017 (BR 03). On the date of the incident, § 87(2)(b) drove a rental vehicle to § 87(2)(b) in the Bronx from her mother's house in Connecticut. § 87(2)(b) stated that she observed an unmarked grey sedan following her vehicle. § 87(2)(b) girlfriend, § 87(2)(b) was in the passenger seat. § 87(2)(b) stopped the vehicle and double-parked in front of her building located at § 87(2)(b) in order to drop § 87(2)(b) off first before going to look for parking. As soon as

§ 87(2)(b) pulled up in front of § 87(2)(b), the unmarked vehicle drove up from behind and turned on the emergency lights. PO Lara approached the driver's side and asked § 87(2)(b) for her license and registration, while PO Ramirez stood by the passenger side. PO Ramirez did not say anything to § 87(2)(b). PO Lara then instructed § 87(2)(b) and § 87(2)(b) to exit the vehicle and go to the rear of the vehicle. PO Ramirez opened the passenger door and searched the vehicle while PO Lara frisked and stuck a finger into § 87(2)(b) front pants pockets. Sgt. Whelan and PO Skehill arrived shortly after and Sgt. Whelan searched the vehicle again, including the trunk. § 87(2)(b) was issued a summons for double-parking by PO Lara.

§ 87(2)(b) friend who she only knew as "§ 87(2)(b)" recorded the incident on his phone and transferred it to § 87(2)(b) phone at a later time. She did not have any contact information for him. She stated that she was going to give § 87(2)(b) the undersigned investigator's contact information, however § 87(2)(b) did not contact the CCRB to provide a statement.

§ 87(2)(b) was interviewed at the CCRB on November 16, 2017 (BR 04) and her statement was consistent with § 87(2)(b) in regards to the car stop and both vehicle searches. § 87(2)(b) also stated that PO Lara searched § 87(2)(b) pants and sweater pockets.

PO Lara was interviewed at the CCRB on March 16, 2018 (BR 05). PO Lara stated that he and PO Ramirez were not following § 87(2)(b) vehicle. They pulled up to the corner of Walton Avenue and Henwood Place and PO Lara observed § 87(2)(b) rental vehicle double-parked in front of § 87(2)(b). PO Lara observed the vehicle for a few seconds to see if there would be a drug transaction because the neighborhood is a drug-prone area and the precinct had just executed a search warrant on a nearby store for drugs. PO Lara decided to approach the double-parked vehicle solely for the purpose of the double-parking violation. As the officers pulled up behind § 87(2)(b) rental vehicle, an odor of marijuana emanated from the vehicle. There were no other vehicles around or other civilians walking that the odor could have come from. The odor of marijuana got stronger as PO Lara spoke to § 87(2)(b) at the driver's side window. PO Lara asked § 87(2)(b) for her license and registration and then ran her license on his department-issued phone. PO Lara saw that § 87(2)(b) had recent charges for firearm possession and marijuana charges. This reason along with the strong odor of marijuana coming from the vehicle prompted PO Lara to tell § 87(2)(b) and § 87(2)(b) to step out of the vehicle. PO Lara patted down § 87(2)(b) pants pockets for his safety. PO Lara did not see if PO Ramirez frisked § 87(2)(b). PO Lara denied searching § 87(2)(b) pockets. PO Lara stated that PO Ramirez searched the vehicle for contraband but did not see where in the vehicle he searched. PO Lara called for his supervisor, Sgt. Whelan to come to the scene. Sgt. Whelan arrived with PO Skehill but PO Lara did not recall if Sgt. Whelan searched the vehicle.

PO Ramirez was interviewed on April 11, 2018 (BR 06) and his statement was consistent with PO Lara that they approached the vehicle due to § 87(2)(b) being double-parked and that there was an odor of marijuana emanating from § 87(2)(b) vehicle upon approach. PO Ramirez admitted to searching the vehicle due to the odor of marijuana and no marijuana or other contraband was found. He also did not recall if Sgt. Whelan searched the vehicle or the trunk.

PO Skehill was interviewed at the CCRB on April 18, 2018 (BR 07). PO Skehill had no recollection of this incident.

Sgt. Whelan was interviewed at the CCRB on April 18, 2018 (BR 08). Sgt. Whelan stated that he responded to a call for a supervisor at the scene. Upon arriving, he saw § 87(2)(b) and § 87(2)(b) standing outside of the rental vehicle. PO Lara explained that the vehicle stop was due to § 87(2)(b) being double-parked and that there was an odor of marijuana coming from

the vehicle. Sgt. Whelan walked up to § 87(2)(b) vehicle and confirmed the odor of marijuana emanating from the vehicle. Sgt. Whelan then used his flashlight to look into the back window of the vehicle and saw a liquor bottle on the back passenger seat. He also saw two plastic cups in the rear cup holder. Sgt. Whelan opened the back passenger door and leaned in to look into the cups and check if the liquor bottle was open. Sgt. Whelan wanted to check if the bottle was open and if they had been drinking in the vehicle. Sgt. Whelan confirmed the bottle was sealed and the cups were empty, so he exited the vehicle and closed the door. He denied searching the vehicle beyond just checking the liquor bottle and cups. Sgt. Whelan's memo book entries support his statement to the CCRB (Board Review 16)

§ 87(2)(b) provided two videos related to this case. The first video shows § 87(2)(b) vehicle double-parked at the location. It does not show Sgt. Whelan looking into the window of the vehicle but his flashlight is on and in his hand while he opens the back passenger seat. He is seen leaning into the vehicle and pointing his flashlight around the area where the rear cup holders would be, as well as the rear seat. The second video (Board Review 02) depicts § 87(2)(b) speaking with PO Lara and PO Ramirez. PO Ramirez can be heard at the 58 second mark, "First of all, you're double-parked. Second, when we approached the vehicle we smelled weed, and that's why we searched the car." § 87(2)(b) did not deny the smell of marijuana in the video.

VTL Violation 46 prohibits non-commercial vehicles from parking next to another vehicle that is already parked at the curb (BR 13).

The smell of marijuana alone is sufficient to provide officers with probable cause to search a vehicle and its occupants. *People v. Chestnut*, 43 A.D.2d 260 (1974) (BR 14). Furthermore, *People v. Robinson*, 271 A.D.2d 17, 711 N.Y.S.2d 384 (2000) (BR 15) states that an officer's subjective intent is irrelevant when they are otherwise legally permitted to take an action.

It is undisputed that § 87(2)(b) double-parked her rental vehicle in front of 112 Henwood Place. It can be seen in the video that § 87(2)(b) provided that the vehicle is in fact double-parked and the officers state in the video that they approached her for being double-parked. Additionally, § 87(2)(b) was issued a summons for double-parking.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation G – Abuse of Authority: Sergeant Michael Whelan damaged § 87(2)(b) property.

During § 87(2)(b) interview she stated that while Sgt. Whelan was inside of the vehicle, he grabbed her pack of cigarettes from inside the vehicle and crushed them with his hand. § 87(2)(b) did not mention this alleged action during her statement.

Sgt. Whelan denied seeing a pack of cigarettes and denied crushing them. PO Lara and PO Ramirez did not see Sgt. Whelan crush a pack of cigarettes and did not recall seeing Sgt. Whelan in the vehicle. PO Skehill had no recollection of the incident.

The video footage provided by § 87(2)(b) does not capture this alleged action.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of March 22, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to 5 CCRB complaints and has been named as a victim in 4 allegations (Board Review 09).

- § 87(2)(b)

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 10).
- Police Officer Rafael Lara has been a member of service for 3 years and this is the first CCRB complaint to which he has been a subject.
- Police Officer Fausto Ramirez has been a member of service for 3 years and this is the first CCRB complaint to which he has been a subject.
- Sergeant Michael Whelan has been a member of service for 8 years and has been a subject in 12 CCRB cases and 27 allegations, of which 5 were substantiated.

- 201400419 involved substantiated allegations of vehicle stop, vehicle search, frisk, search of person, and question against Sgt. Whelan. The board recommended Command Discipline and the NYPD has not yet imposed discipline.
- § 87(2)(g) [REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date